

46 Am. Jur. 2d Judges § 132

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

a. Bias or Prejudice as Grounds for Disqualification, in General

§ 132. Bias of judge against attorney for party

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(1), 49(2)

A.L.R. Library

[Disqualification of judge for bias against counsel for litigant, 54 A.L.R.5th 575](#)

[Disqualification of judge by state, in criminal case, for bias or prejudice, 68 A.L.R.3d 509](#)

The Code of Judicial Conduct provides that a judge must disqualify him- or herself in any proceeding in which the judge has a personal bias or prejudice concerning a party's lawyer.¹ The statutes of some states likewise provide for the disqualification of a judge in a proceeding in which the judge is personally biased or prejudiced for or against an attorney.² The courts have in some cases found that the antipathy of a judge toward counsel for a litigant is sufficiently shown to justify disqualification,³ often on the basis that the hostility between a party's attorney and a judge would lead a reasonable-minded person to question whether the judge's impartiality might be questioned.⁴ Some courts have indicated that bias toward the attorney for a party may sometimes disqualify a judge, but have found that the facts relied on to prove prejudice were insufficient to disqualify.⁵ Other courts have held that bias or prejudice towards an attorney is insufficient to disqualify a judge unless the bias rises to such a degree as to adversely affect the interests of the client.⁶ Yet other courts have held that personal bias or prejudice against

counsel for a litigant, in the absence of evidence of bias directed against the litigant him- or herself, does not furnish a ground for disqualification of the judge.⁷

Observation:

A judge's mere reporting of perceived attorney unprofessionalism to the state bar, in and of itself, is legally insufficient to support judicial disqualification.⁸

A judge in a criminal case may be disqualified for prejudice against the attorneys for the state.⁹ In addition, a judge may be subject to disqualification if, after the trial begins, he or she becomes biased or prejudiced against the state.¹⁰

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Footnotes

- 1 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(1).
Judges have an ethical duty to disqualify themselves from any matter in which they have a personal bias or prejudice concerning a party or an attorney appearing before them. *Brunson v. State*, 293 Ga. 226, 744 S.E.2d 695 (2013).
- 2 *People v. Houston*, 179 Mich. App. 753, 446 N.W.2d 543 (1989); *State v. Belgarde*, 119 Wash. 2d 711, 837 P.2d 599 (1992); *Osborn v. Manning*, 812 P.2d 545 (Wyo. 1991).
- 3 *James v. Theobald*, 557 So. 2d 591 (Fla. 3d DCA 1990).
A trial judge's antipathy toward a plaintiff's case, and chastising, holding in contempt, and summarily removing his trial counsel after four days of trial with only two and one-half days for replacement counsel to prepare, sufficiently prejudiced the plaintiff so as to require a new trial. *Santa Maria v. Metro-North Commuter R.R.*, 81 F.3d 265 (2d Cir. 1996).
- 4 *S.S. v. Wakefield*, 764 P.2d 70 (Colo. 1988); *Davis v. Neshoba County General Hosp.*, 611 So. 2d 904 (Miss. 1992).
As to the disqualification of a judge on the basis that the judge's impartiality might reasonably be questioned, generally, see § 135.
- 5 *Shakin v. Board of Medical Examiners*, 254 Cal. App. 2d 102, 62 Cal. Rptr. 274, 23 A.L.R.3d 1398 (2d Dist. 1967); *S.S. v. Wakefield*, 764 P.2d 70 (Colo. 1988); *State v. Mata*, 71 Haw. 319, 789 P.2d 1122 (1990); *Appeal of Nordhoy*, 119 Pa. Commw. 620, 547 A.2d 867 (1988).
- 6 *Town Centre of Islamorada, Inc. v. Overby*, 592 So. 2d 774 (Fla. 3d DCA 1992); *State v. Hollingsworth*, 160 Wis. 2d 883, 467 N.W.2d 555 (Ct. App. 1991).
- 7 *Liston v. Butler*, 4 Ariz. App. 460, 421 P.2d 542 (1966); *Dowell v. Hall*, 85 Okla. Crim. 92, 185 P.2d 232 (1947).
- 8 *5-H Corp. v. Padovano*, 708 So. 2d 244 (Fla. 1997).
- 9 *State v. Davis*, 159 Ga. App. 537, 284 S.E.2d 51 (1981).
- 10 *State ex rel. McAllister v. Slate*, 278 Mo. 570, 214 S.W. 85, 8 A.L.R. 1226 (1919); *State v. Superior Court of Washington for King County*, 121 Wash. 611, 209 P. 1097 (1922).

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